

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

REGINALD EL, #163990,

Plaintiff,

v.

CASE NO. 15-10472
HONORABLE SEAN F. COX

G. LEACH, THE OFFICE OF GOVERNOR
RICK SNYDER, FNU VONHITMAYER,
FNU ROBINSON, FNU GROVES, THE
MICHIGAN DEPARTMENT OF CORRECTIONS,
and MACOMB CORRECTIONAL FACILITY,

Defendants.

**OPINION AND ORDER
DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* AND
SUMMARILY DISMISSING THE COMPLAINT WITHOUT PREJUDICE**

Plaintiff Reginald El, also known as Reginald Miles and Sheik Hasan El,¹ is a state prisoner presently confined at the Macomb Correctional Facility in New Haven, Michigan. He recently filed a *pro se* civil complaint against state correctional officials and government entities.

The complaint alleges, among other things, that the defendants have restricted Plaintiff's time in the prison law library and deprived him of a memory typewriter, research materials, reference books, and telephone directories. In addition, Plaintiff claims that defendant Robinson destroyed his court papers and falsely charged him with possessing a weapon in retaliation for Plaintiff's threat to file a grievance against

¹ See <http://mdocweb.state.mi.us/OTIS2/otis2profile.aspx?mdocNumber=163990>.

Robinson. The complaint seeks money damages and injunctive relief.

Plaintiff did not pay the filing fee for this action, nor file a proper application for leave to proceed without prepayment of the filing fee, but he has asked the Court to waive the fees and costs for this action. See Compl. at p. 14. Under the “three strikes” provision of the Prison Litigation Reform Act of 1996, a prisoner may not bring a civil action or appeal without prepayment of the filing fee

if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g).

A review of Plaintiff’s litigation history in federal court reveals that three of his previous cases were dismissed as frivolous or for failure to state a claim. See *Miles El v. United States, et al.*, No. 2:06-cv-264 (W.D. Mich. June 4, 2007); *Miles El v. MDOC, et al.*, No. 2:97-cv-39 (W.D. Mich. Aug. 4, 1997); and *Miles El v. McGinnis*, No. 2:97-cv-52 (W.D. Mich. Aug. 1, 1997). Additionally, Plaintiff has been warned that, due to his three “strikes,” he may not proceed without prepayment of the filing fee for his complaints. See “Order Denying Leave to Proceed *In Forma Pauperis* - Three Strikes,” *Miles El v. Holder, et al.*, No. 2:10-cv-258 (W.D. Mich. Oct. 13, 2010). Consequently, Plaintiff may not proceed without prepayment of the filing fee for this action unless he is in “imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

“The imminent danger exception is essentially a pleading requirement subject to the ordinary principles of notice pleading.” *Vandiver v. Vasbinder*, 416 F. App’x 560, 562 (6th Cir. 2011). “[T]o allege sufficiently imminent danger, . . . ‘the threat or prison

condition must be real and proximate and the danger of serious physical injury must exist at the time the complaint is filed.’ ” *Vandiver v. Prison Health Services, Inc.*, 727 F.3d 580, 585 (6th Cir. 2013) (quoting *Ritter v. Kinder*, 290 F. App’x 796, 797 (6th Cir. 2008)).

Plaintiff has not alleged that he was in “imminent danger of serious physical injury” when he filed his complaint, and nothing in the complaint suggests that he was facing some real and proximate danger of serious physical injury at the time. As such, Plaintiff has failed to establish that his complaint falls within the exception to § 1915(g). Accordingly,

IT IS ORDERED that Plaintiff may not proceed without prepayment of the fees and costs for this action.

IT IS FURTHER ORDERED that the complaint (Dkt. #1) is summarily DISMISSED without prejudice pursuant to 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that an appeal from this order would be frivolous and, therefore, could not be taken in good faith, 28 U.S.C. § 1915(a)(3), or without prepayment of the appellate filing fee, 28 U.S.C. § 1915(g).

Dated: February 27, 2015

S/ Sean F. Cox
Sean F. Cox
U. S. District Judge

I hereby certify that on February 27, 2015, the foregoing document was served on counsel of record via electronic means and upon Reginald El, via First Class mail at the

address below:

Reginald El 163990
MACOMB CORRECTIONAL FACILITY
34625 26 MILE ROAD
NEW HAVEN, MI 48048

S/ J. McCoy
Case Manager